



SCOTTISH POLICE FEDERATION

Established by Act of Parliament

Joe Grant
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David Thompson
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Victoria Quay
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EH6 6QQ

Ref: JG/LS

17 August 2007

Dear Mr Thompson

Draft Commonwealth Games Bill: Consultation

Thank you for the opportunity to comment on the above consultation, on behalf of the Scottish Police Federation, which is the staff association that represents 98% of police officers in Scotland.

The Scottish Police Federation supports the principal policy objective of the proposed legislation and notes the implications for police officers.

We have compared the powers to be conferred on Enforcement officers in this Draft Bill with previous legislation relating to commercial activities and considered the arrangements for governance and accountability.

It is noted that the Draft Bill, if enacted, would create specific crimes with which the police would be entitled to deal, whilst we are content with such a limited and time bound proliferation of powers for police officers we are concerned to ensure that an impact assessment is carried out to inform deliberations on resource(s) allocation.

We have reviewed Sections 2, 9, 15, 20 and 27 of the Act as essential background and structure to those parts of the legislation we have specific interest in.

In terms of **Section 21 (1)(a)** an Enforcement Officer may enter and search any place where the officer believes a Games offence has been or is being committed or which the officer believes has been or is being used in connection with a Games offence.



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We have reviewed Sections 2, 9, 15, 20 and 27 of the Act as essential background and structure to those parts of the legislation we have specific interest in.

In terms of **Section 21 (1)(a)** an Enforcement Officer may enter and search any place where the officer believes a Games offence has been or is being committed or which the officer believes has been or is being used in connection with a Games offence.

We find it significant that the Enforcement officer does not require a warrant from the Sheriff to do so. Section 21 (1)(a)(i) may well be roughly equivalent to the "hot pursuit" scenario whereby a constable may enter premises without a warrant **but the power accorded to the Enforcement officer here (because it is unrestricted by the need for any warrant) would seem to be greater than the power accorded to a constable.**

We compared the above power with that conferred upon Enforcement officers in a more recent enactment, namely the Gambling Act 2005. Section 303 of that Act creates Enforcement officers. Section 305 of the Act permits constables or Enforcement officers or authorised persons in terms of the Act to undertake activities for the purpose of assessing compliance with provisions made under the Act and whether an offence has been committed under the Act. Section 306 confers power on a constable or Enforcement officer to enter premises if he *reasonably* suspects that an offence under the Act may be being committed on the premises or about to be committed on the premises.

The Draft Glasgow Commonwealth Games Bill does not impose on the Enforcement officer the concept of "reasonable belief". He may simply say that he believes that an offence has been or is being committed and then proceed in accordance with that belief, even if there should be no foundation for it. **To that extent, therefore, the power created by the draft Glasgow Commonwealth Games Bill does exceed the power conferred on similar personnel under different legislation.**

Section 21 (1)(a)(ii) confers on the Enforcement officer the power to enter and search any place which the officer believes has been or is being used in connection with a Games offence. Again, no warrant is required and there is no imposition of the concept of reasonableness to be attached to the belief. Again, that seems to be a greater power than the power conferred upon Enforcement officers in terms of the Gambling Act 2005 by virtue of Section 306 (2) of which a warrant would be required for entry into premises where there are reasonable grounds for suspecting that an offence under the Act had been committed. The only circumstances (under the draft Glasgow commonwealth Games Bill) in which the Enforcement officer must have a warrant for search and entry are where the premises are a house or are a place that can be entered only through a house (see Section 24 of the draft Bill).

Section 21 (1)(b) permits an Enforcement officer when at such a place to take such action as the officer considers appropriate to enforce a Games offence. It specifies examples such as seizing, concealing or destroying anything which the officer believes to be an infringing article. Again, there is no imposition of the concept of reasonableness in the consideration of the officer and, frankly, this confers a power which I suspect is not conferred on any other Enforcement officer in respect of the traditional utilities because the officer under the Bill has the right to destroy any article other than a vehicle (Section 21 (2)(b)). **The only limitation that I can find on this power of destruction is that it must be done at a reasonable time in terms of Section 23 of the draft Bill. Is this what is intended?**

Section 21 (2) of the draft Bill defines an infringing article as any article used in connection with the commission of a Games offence or anything other than a vehicle containing such an article. Technically, therefore, an Enforcement officer has the right to destroy a building or a container from a container ship provided it contained an article that could be defined as an infringing article. Section 317 of the Gambling Act 2005 contains the powers of the Enforcement officer under the Gambling Act and they do not have powers as draconian as this power enjoyed by Enforcement officers acting under the draft



Bill. This power to destroy is much wider than any power conferred upon a constable and, again, would seem to be exercisable without warrant.

Section 21 (4) provides that an Enforcement officer may use or authorise the use of reasonable force when taking action under Section 21 only if the Sheriff has authorised use of reasonable force or if the officer believes that there is a real and substantial risk that delay in obtaining authority would defeat or prejudice the purpose of taking action. The use of force is not restricted by that sub-section to the forcing of entry and, in consequence, it must be concluded that in certain circumstances the use of reasonable force to detain or apprehend a suspect is envisaged. The requirement that a Sheriff authorise the use of reasonable force probably indicates that it is envisaged that warrants would be obtained to force entry to premises and, to that extent, the provision is not one to which I make objection. Indeed, provided that a warrant is obtained, it is arguable that there could be no objection to any force authorised by the warrant on the basis that the projected use of force has been subjected to independent judicial scrutiny before authorisation. **The second part of the sub-section, that the officer believes that there is a real and substantial risk that delay in obtaining authority would defeat or prejudice the purpose of taking action, is another provision of the draft Bill that is not subject to a requirement of reasonableness. In other words, the belief of the officer need not necessarily be a reasonable belief, making this an entirely subjective test rather than an objective one.**

There is no equivalent provision of power under the Gambling Act 2005 to use reasonable force and, indeed, Section 317 specifies more restricted powers for Enforcement officers under the Gambling Act 2005 than are accorded to Enforcement officers under the draft Glasgow Commonwealth Games Bill. It is also worthy of note that in terms of Section 317 (3), Regulations made by the Secretary of State would make provision about retention, use, return, disposal or destruction of anything supplied or removed using powers granted by the Act whereas the draft Glasgow Commonwealth Games Bill gives the Enforcement officer the power to destroy articles provided that they are "infringing articles".

We have additional and specific concern about the apparent power of an Enforcement Officer to use force against an individual. It is the construction of **Section 21 (4)**, namely "an Enforcement officer must not authorise another person to use reasonable force against an individual" which leads me to believe that an Enforcement officer may, by implication, be authorised by the Act to use reasonable force against an individual. This arises on the basis that exclusion of one possibility is normally interpreted to include the possibilities not specifically excluded.

In our view, that means that an Enforcement officer may personally use reasonable force against an individual provided that the Sheriff has granted a warrant to do so or the officer believes that there is a real and substantial risk that delay would defeat or prejudice the purpose of taking action. **We believe that this is a significant departure from the powers conferred on "non-public policing" officers.**

We have not compared the powers of Enforcement officers with the very extensive powers accorded to H.M. Revenue & Customs officers and Immigration officers. We consider that there is an important distinction to be drawn between those who act directly for emanations of the state or the community, such as those officers and police officers, and those who effectively act for a third party, albeit under legislative provisions, particularly



when that third party is a commercial entity whose commercial interests are being protected.

In conclusion, I have grave reservations regarding the attainment and use of significant powers to non police actors and such reservations are amplified by a glaring lack of suitable accountabilities set out in the draft legislation.

I trust you find the foregoing useful in your deliberations.

Yours Sincerely

A handwritten signature in cursive script, appearing to read "Joe Grant".

Joe Grant
General Secretary

